

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Shanks
25399

FILE: B-211573

DATE: June 7, 1983

MATTER OF: Bennett Y. Cowan, Jr., M.D.

DIGEST: Former military member seeks payment of temporary lodging allowance for expenses he incurred during a period when he resided in temporary quarters. The claim may not be paid because there is insufficient evidence in the present record to support a conclusion that appropriate authority determined, under the applicable regulations, that he was required to reside in hotel or hotel-like accommodations during the period of this claim, and that the accommodations he stayed in were of that type.

This action is taken upon the appeal by Bennett Y. Cowan, Jr., M.D., a former captain in the United States Army Medical Corps, of our Claims Group's denial of his claim for temporary lodging allowances. We conclude that the claim may not be paid on the basis of the present record.

Dr. Cowan claims a temporary lodging allowance for the period of October 15 through November 30, 1978, while he was serving with the 45th Field Hospital near Leghorn, Italy. It appears that during the 47-day period covered by the claim Dr. Cowan occupied a two-room apartment equipped with a hot plate and small refrigerator. It is indicated that he rented it on a daily basis, for which he made rental payments every 10 days. It also appears that he first arrived at that duty station on August 8, 1978, and was paid temporary lodging allowance for at least part of the period from August through October 15.

The authority for payment of temporary lodging allowances is found in Part G, chapter 4, Volume 1, of the Joint Travel Regulations (1 JTR), issued pursuant to 37 U.S.C. § 405 (1976). Paragraph M4303-1.1, 1 JTR (change 307), in effect at the time this claim arose, states in part as follows:

"* * * Temporary lodging allowances are authorized for the purpose of partially reimbursing a member for the more than

025832

normal expenses incurred at hotels or hotel-like accommodations and public restaurants or at hotel or hotel-like accommodations when use of public restaurants is not required:

- "1. upon initial arrival (reporting) at a permanent duty station outside the United States and pending assignment of Government quarters, or pending completion of arrangements for other permanent living accommodations when Government quarters are not available * * *."

The record indicates that Dr. Cowan sought payment of this claim in November 1978, at which time the housing officer requested information from higher authority as to whether a two-room apartment with hot plate and small refrigerator constituted "hotel or hotel-like accommodations" for purposes of entitlement to a temporary housing allowance. The housing officer was at that time informed that payment could be made based on temporary lodging in a two-room apartment if it was licensed as a pensione (temporary quarters). Dr. Cowan indicates that his claim was denied because he could not furnish proof that the establishment in which he resided was licensed as a pensione.

Subsequently, information was received by the housing officer which indicated that the earlier instruction was in error in requiring proof of licensing of the establishment as temporary quarters in order for the member's lodging to be considered hotel or hotel-like accommodations. The later information apparently clarified the nature of accommodations for which a temporary lodging allowance is authorized as temporary quarters which are paid for on a daily basis, regardless of the licensed status of the establishment. Thereafter, the Army Finance Center forwarded Dr. Cowan's claim to our Claims Group as a doubtful claim on the basis that it was a claim based on a retroactive modification or correction of orders.

We note initially that a subsequent determination that a previous instruction requiring evidence of a

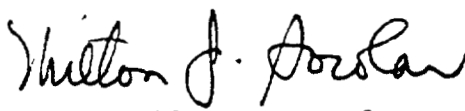
license was erroneous does not constitute a retroactive modification or correction of an order. Instead, it appears to have been a change in interpretation or ruling on one element to be considered in determining whether quarters are hotel or hotel-like accommodations.

However, this claim may not be paid on the basis of the information now before this Office. Payment of a temporary lodging allowance is subject to certain conditions set forth in paragraph M4303-2, 1 JTR. Paragraph M4303-2b(1) provides that the designated overseas commander will determine whether it is necessary for members to occupy hotel or hotel-like accommodations when they first arrive at an assigned overseas duty station. The commander is responsible for issuing a statement of non-availability of Government quarters and for administering the various requirements that are conditions precedent to payment of temporary lodging allowances. In addition, paragraph M4303-2c(1) provides that upon initial assignment to a permanent duty station outside the United States, the period of entitlement to temporary lodging allowances will not exceed 60 days.

The record indicates that in October 1978, Dr. Cowan was paid a temporary lodging allowance covering at least some of the period between his arrival at Leghorn in August 1978 and the beginning of the period covered by the present claim. However, there is no information concerning the dates or the length of time covered by that payment. Further, there is no evidence that he was not assigned Government quarters during the period of the subject claim, or that his commander determined the apartment he was renting was hotel or hotel-like accommodations and that it was necessary for him to continue lodging in such quarters after the initial period for which he was paid.

We have held that in the absence of supportive documents or evidence showing that the procedures required by the regulations were followed, a claim for temporary lodging allowances may not be allowed. Matter of Badera, B-191551, June 11, 1979; Matter of Alfred, B-186784, February 14, 1977; Matter of Hollman, B-187188, October 18, 1976. The record now before us, which apparently is all the record the Army Finance Center has been able to provide, does not contain sufficient evidence that the conditions under which the allowance is payable existed during the period covered by Dr. Cowan's claim.

Therefore, payment may not be authorized, and the denial by the Claims Group is sustained.

for 
Comptroller General
of the United States